

CIPC UPDATE AND COMPANY SECRETARIAL DUTIES

Presenter:

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Presenter

Edith Wilkins

Joined Sekretari (Pty) Ltd, a Company Secretarial Company, in January 1995, 11 years after Dora du Plessis started the company.

Has been involved with in-house training programs since 2011 and presented seminars and webinars.

Has 26 years experience in Advanced Corporate Law and Corporate Governance.

Acts as Company Secretary to various companies, performs Statutory duties, attends meetings, drafts minutes and liaise with CIPC as well as the Master of the High Court.



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- 15. Financial Statements and Annual Returns
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Abbreviations used will have the following meaning:

- “*The Act*” will refer to the Companies Act, no 71 of 2008, as amended.
- “*MOI*” will refer to the Memorandum of Incorporation.
- A reference to a “Page number” will refer the page number in your guidelines.
- “*Sect*” will refer to a Section number quoted in the Act.
- “*Reg*” will refer to the Companies Regulations, 2011.
- “*Copy of ID*” will mean a copy of an ID, certified by a Commissioner of Oaths, to reach CIPC within three months after the date of certification.

1. CIPC UPDATE

- The CIPC is continuously upgrading their IT infrastructure and the speed, reliability and quality of their system is continuously improving.
- They are becoming more aggressive with compliance with the Act and regulations, as well as prevention of fraud.
- Restored companies that do not pay their annual duties within 1 month after the restoration process is started, are being deregistered again.
- The third party registration method has been discontinued
- Compliance checklists are compulsory for Public companies, SOC's and other companies obligated to lodge audited financial statements

ACT

- The Act and any amendments thereto have to be approved by parliament.
- e.g. A public company must have at least three directors.

Regulations

- The Regulations are compiled and amended by the minister. It deals with the practical implementation of the Act.
- e.g. File fees and the formule for the "public interest score" of a company

CIPC Rules

- These are requirement prescribed by CIPC to support their system.
- e.g. Certified ID documents must be submitted with lodgements

Act

The size of the Company does not affect the requirements of the Act



2.

Duties of the Company Secretary

2.1 GENERAL

- The word “secretary” comes from the Latin word “*secretarius*”, which means “*a person to whom a secret is entrusted*”.
- Principal administrative officer
- The Companies Act defines the company secretary as an Officer of the company
- Prescribed officer is a person who, in terms of Companies Reg 38 “*exercise, or regularly participate to a material degree in general executive control over and management of the business, or a significant portion of the business and activities of the company*”

General (cont.)

- King IV™ suggests that the company secretary should not be a member of the Board.
- The secretary forms an important part of management and is the chief governance officer
- Right hand to the chairman of the Board
- Appointment of a company secretary is mandatory for Public and State-owned companies
- Qualities of a company secretary
- Disqualified persons (**Sec 69**)
- The Board as a whole is responsible for appointment

General (cont.)

- Appointment within 40 of incorporation or 60 days from vacancy occurs (Sec 86(3) and (4))
- Private- Personal liability- and Non-profit companies are not required to appoint a company secretary
- King IV™ suggests that all companies should consider appointing a company secretary
Personal liability
- Juristic persons as company secretary
- Sec 84(5) – persons disqualified in terms of Sec 69(8)
- Evaluation every 2 years
- Sec 84(6) authorises CIPC to intervene when directors fail to appoint a company secretary to any company required to in terms of the Act

General (cont.)

- Person should have necessary objectivity, severity, knowledge, competence, accountability and skills (Sec 86)
- Do not participate in meetings
- King IV™ suggests that the company secretary should not be a member of the Board
- Report to the Board through chairperson – statutory duties
- Report to member of the executive management (usually CEO) with regards to all administrative matters and other duties
- In terms of Sec 90(2)(b), the auditor may not be appointed as company secretary

2.2. ADMINISTRATIVE DUTIES

- The job of a company secretary has been underestimated over the years
- Sec 88 prescribes the duties of the company secretary
- Convene meetings, prepare notice, Board packs
- Prepare proper minutes/resolutions
- Induction of new Board members
- Oversee the rotation of directors
- Proper procedures to be followed at Board meetings
- Publish Board resolutions etc.

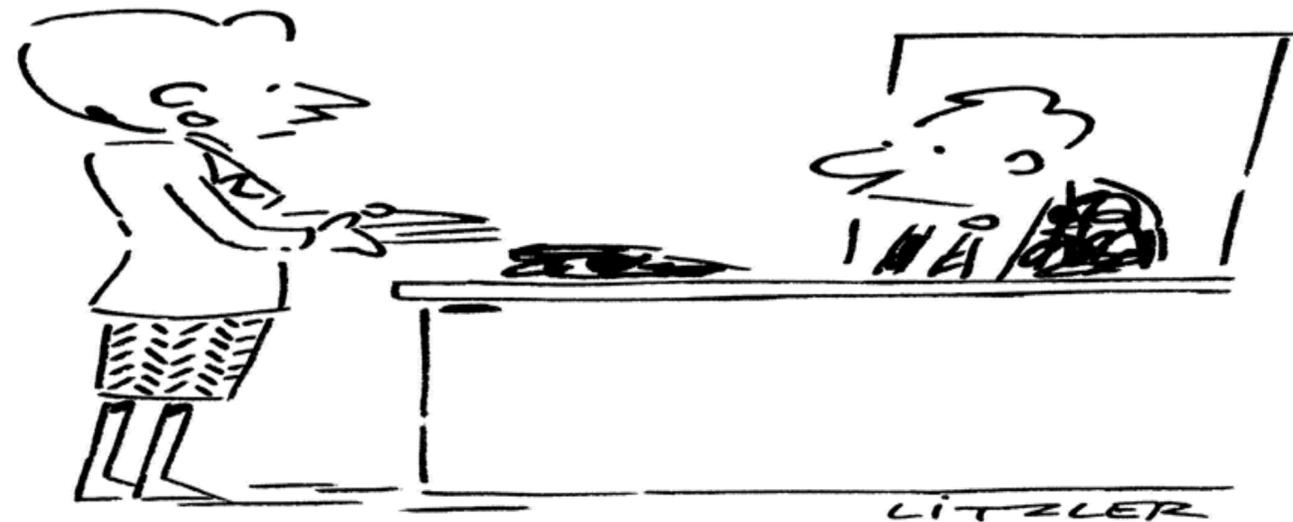
Administrative duties (cont.)

- Must assist Board with duties
- File annual returns.
- All changes, i.e. special resolutions, appointment, resignation, death and/or removal of directors.
- Registered- and statutory address if records are not kept at the registered office address.
- SARS correspondence.
- Ensure that the annual financial statements is sent to every person entitled thereto.
- Ensure that the board- and committee charters as well as terms of reference are updated and signed

Administrative duties (cont.)

- Inform directors of their powers and duties in terms of the Act, MOI and other applicable legislation Ensure that all records and legal documents are kept safe.
- Ensure that all required documents to appoint a director or to transfer shares are signed, e-STT's are paid to SARS and documents registered with CIPC, if applicable (CoR39).
- Ensure that all documents are kept for the required period as per the Companies Act

Minutes approved by the Board and signed by the Chairman, is a legal document and accepted as such by the court.



"I'M REALLY NOT MUCH OF A
PROOF READER BUT I DID CATCH
MOST OF YOUR B.S."

2.3 Requirement to appoint a Company Secretary

(Section 86, Regulation 44)

- Appointment of company secretary compulsory for Public and State-Owned companies
- A juristic entity (company, trust or CC), registered in RSA, may be appointed as company secretary
- Private and Non-Profit companies need not officially appoint a company secretary, but a company may however by choice officially appoint a company secretary
- JSE require that a company secretary may not be a director and must be at arms length with the board
- Appointment of company secretary can be appointed by the board or the shareholders

2.4 Duties of the Company Secretary *(Section 88)*

- Duties of the Company Secretary *(Section 88)*
- Provide directors with guidance as to their duties, responsibilities and powers
- Making directors aware of the Company Act
- Reporting to the board any failure on the part of the company to comply with the MOI
- Ensuring all minutes are properly recorded and saved in a secure place
- File all required returns and notices in terms of the Act and Regulations
- Ensure that each shareholder receive a copy of the company's annual financial statements

3. NAMES

3. Name Criteria

Name of Company (*Sect 11, Reg 8 & 9*)

- A company cannot have sole ownership of a name if the name is not unique.
- Registration of the translation of names and of shortened names is no longer allowed.
- Names in association with existing registered names may be registered with written consent of the directors/members of the existing company/CC.
- If the MOI includes a Ring-Fenced condition the abbreviation (RF) should form part of the name.
- If you reserve a name with “insurance”, assurance or any abbreviation

Name criteria (cont.)

Name of Company (Sect 11, Reg 8 & 9)

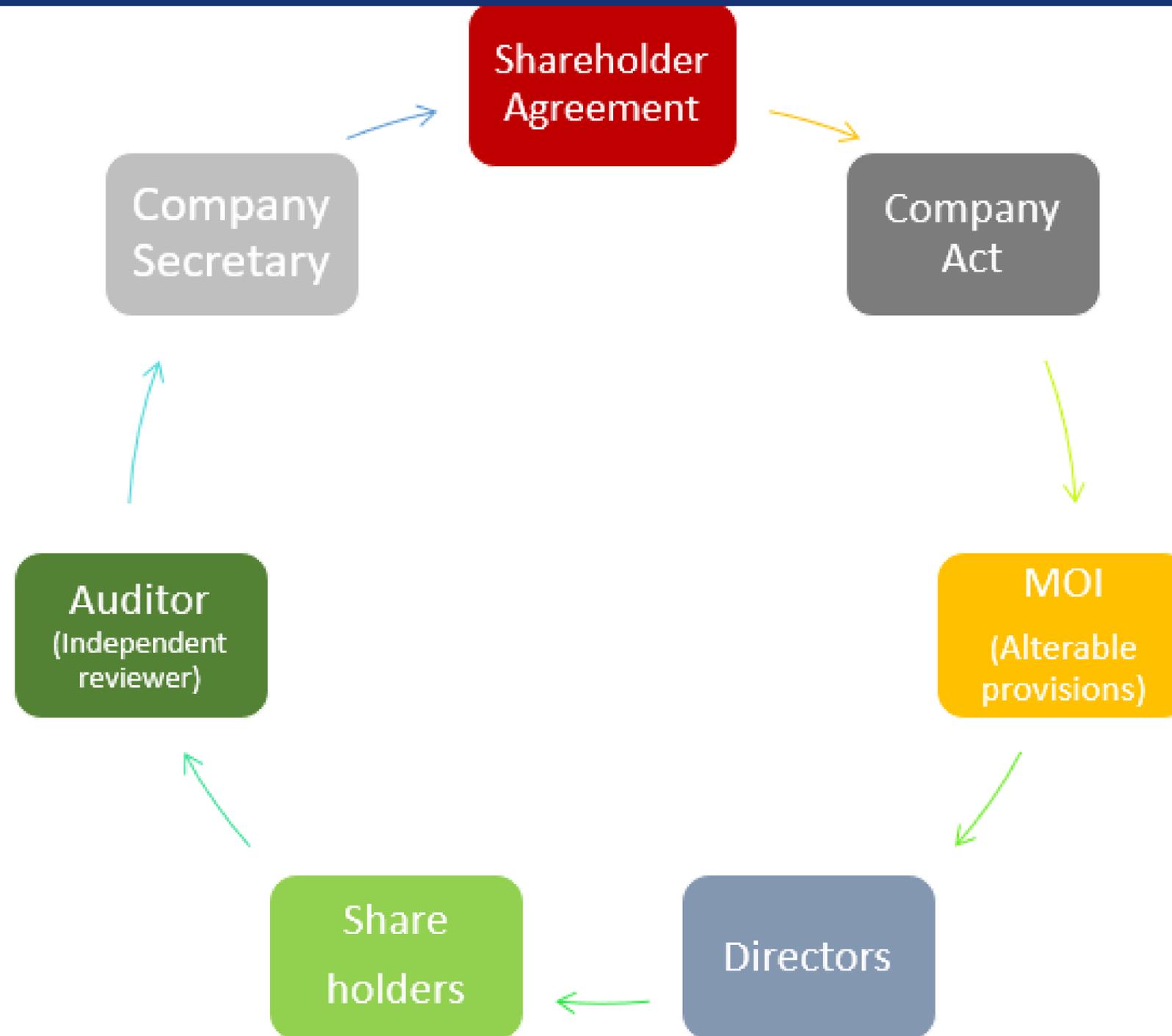
If you reserve a name with “insurance”, assurance or any abbreviation

The Registrar may be prepared to favourably consider an application, if for example -

- a) *the word “insure”, “assure” or any derivative thereof is used in conjunction with words such as, “broker”, “agent”, “consultant”, “intermediary”, or “administrator”;*
- b) *the word “underwrite” is used in conjunction with the words such as, “manager” or “agency”,*
- c) *the name and the description of the business accurately reflects the nature of the business;*
- d) *the name or description of the business or undertaking is not misleading by creating the impression that the entity is:*
 - *a registered long-term or short-term insurer; or*
 - *an underwriting manager in terms of section 48A of the Short-term Ins 49A under the Long-term Insurance Act, respectively.”*

4. COMPANY STRUCTURE

4. Company Structure



4.

CATEGORIES AND FORMATION OF COMPANIES

4. CATEGORIES AND FORMATION OF COMPANIES

Categories of Companies (Sec 8)

- Profit companies
 - Private companies
 - Personal liability
 - Public companies
 - State owned companies
- Non-profit companies
- External companies

TO KNOW

The Act consist of 56 alterable conditions. Whenever the words “Except to the extent that the Memorandum of Incorporation provides otherwise” are stated in the Act, this will mean that we may alter the condition on our MOI and we may lower or further restrict the requirements of the Act in that instance.

As Company Secretaries we should be aware of all the Alterable Conditions that may have an effect on the company. For purposes of this course we shall only deal with alterable conditions that might affect private companies

MOI of a company

- The MOI of a company is void if in contravention with the Act and must set out:
 - the duties, responsibilities and rights of directors, shareholders
 - Must deal with matter applicable to the company not included in the Act
 - Alterable conditions – requirements of the Act may be stricter in the MOI
 - Unalterable conditions – may not be changed
 - May prohibit amendment to certain sections in the MOI
 - May contain restrictions applicable to the company – ring fencing
- Specific requirements in a shareholders' agreement not included in addressed in the MOI

Profit companies

❖ Private companies

- A private company may be formed by one or more persons or an organ of state.
- The MOI of a private company:
 - Prohibits it from offering any of its securities to the Public
 - Restricts the transferability of its securities
- Must have at least 1 director and may specify a minimum and/or maximum amount of directors
- Is not required to hold an AGM
- Is not required to be audited, except as prescribed by the Act

Profit companies (cont.)



Personal liability Companies

- Is a private company
- Professional persons of the same profession
- All directors must be shareholders
- Directors' liability
- Must have at least 1 director and may specify a minimum and/or maximum amount of directors
- Is not required to hold an AGM
- Is not required to be audited, except voluntarily or as prescribed by the Act
- Must be incorporated with a long standard MOI (CoR15.1B) or a unique MOI
- Lodged manually

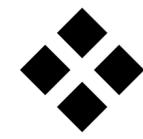
Profit companies (cont.)



Public companies

- Must have at least 3 directors
- May be listed on the JSE
- May offer shares to the public
- Must hold an AGM (Sec 61(7))
- Must appoint an auditor
- Financial statements must be audited and lodged to CIPC
- Must comply with the extended accountability requirements of Chapter 3 of the Act
- Must appoint a Company secretary
- Must appoint an audit committee
- May appoint a social and ethics committee

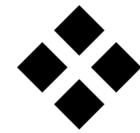
Profit companies



State owned companies

- All requirements for public companies are applicable, except where exemption was granted to. Sec 9(3)
- Is listed as a public company in Schedule 2 or 3 of the Public Finance Act, 1999
- is owned by a municipality, as contemplated in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)
- Must adopt long standard- (CoR15.1B) or unique MOI

Non-profit companies



Non-profit companies (Schedule 1 of the Act)

- A non-profit company is a company registered with a public benefit object or an object relating to cultural or social activities
- May be registered with- or without members
- May have different classes of membership
- Must have at least 3 directors
- Must utilise its total income to advance its' objects
- May be a shareholder in a profit company
- May carry on any business ancillary to its' object
- Audit is not required
- May register as NPO and PBO

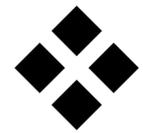
Non-profit companies (cont.)

- May not pay remuneration to directors, members or incorporators except for services rendered, expenses incurred to advance the object of the company or any legal obligation binding the company
- Upon dissolution, all assets will be distributed to one or more non-profit companies, - trusts or registered external non-profit company operating in South Africa, with similar objects
- Does not automatically qualify for any exemption from Tax
- May not convert to another type of company, merge or amalgamate with another company
- May not dispose of assets to a profit company, other than in the normal course of business

External companies

- An external company is a company carrying on business in SA as a profit or non-profit company
- Must be registered within 20 days after business commenced
- A South African representative must be appointed
- Must have registered address in South Africa
- Must continually maintain at least one office in SA
- Will be subject to all requirements of our Act
- Registration may be transferred to South Africa
- Must pay annual duties

Conversion from CC to a Company



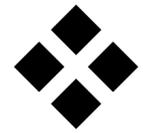
Conversion from CC to a Company (*Schedule 2, Sec 14*)

- No obligation to convert to companies
- May not convert directly to a Non-Profit company
- CC will cease to exist
- Special resolution by at least 75% members required
- All members must become shareholders
- Shareholding not required to be the same as membership
- All right, assets, obligations and liabilities will vest in company
- Any proceedings against the CC may be continued against the company
- Any enforcement measures commenced before the conversion in terms of the Close Corporations Act, may be continued
- Any member's liability in the CC will continue as a liability of the company

Conversion from CC to a Company

- The appointment of the Accounting officer will be terminated upon conversion and an auditor may be appointed and put on record with CIPC but is not compulsory.
- If the Accounting officer continues to act in that capacity to the company, there is no need to inform CIPC formally, but he must be re-appointed at the first meeting of the company
- If a CC is converted to a **public** company, an auditor, company secretary and audit committee must be appointed and CIPC must receive notice thereof
- On conversion the following changes may be made simultaneously:
 - Change of name
 - Financial yearend
 - Registered addresses

Documents to be lodged



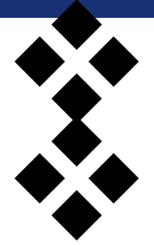
PROFIT COMPANIES



E-mail “manual” lodgements to: companydocs@cipc.co.za

- CoR9.4 (where applicable)
- CoR14.1 and CoR14.1 annexure A
- CoR14.1B; CoR14.1C, CoR14.1D (where applicable)
- Letter of consent to appointment as auditor (where applicable)
- CoR15.1A; CoR15.1B or unique MOI
- Power of Attorney (where applicable)
- Certified copies of ID’s of all incorporators, directors and CIPC agent
- CIPC fee is R125.00 for CoR15.1A and R425.00 for CoR15.1B and unique

Documents to be lodged (cont.)



NON-PROFIT COMPANIES

LONG MOI:

Documents to be lodged manually by e-mail to companydocs@cipc.co.za :

- Approved name reservation (where applicable)
- CoR14.1
- CoR14.1 annexure A
- CoR15.1D, CoR15.1E or unique MOI
- Power of Attorney (where applicable)
- Certified copies of ID's of all incorporators, directors and CIPC agent
- CIPC fee is R125.00 for CoR15.1C and R425.00 for CoR15.1D, CoR15.1E and unique MOI

Documents to be lodged

❖ EXTERNAL COMPANIES

- Documents to be lodged manually by e-mail to companydocs@cipc.co.za
 - CoR20.1
 - CoR20.1 annexure A)
 - CoR21.2
 - Incorporation documents and MOI as registered in the country of origin
 - Power of Attorney (where applicable)
 - Certified copies of passports of all directors, ID's of representative and applicant
 - CIPC fee is R400.00

Documents to be lodged



CONVERSION OF CC TO COMPANY



E-mail “manual” documents to companydocs@cipc.co.za



CoR18.1



CoR9.4



CoR21.1



CoR25



CoR39



CoR44 and letter of acceptance of appointment from auditor (where applicable)



Special resolution



MOI (CoR15.1A, CoR15.1B or unique)



Certified copies of ID’s of all members, directors and agent



Power of Attorney (where applicable)

6. SHARES

6. Shares

Despite the powers of the board, the shareholders are not without any rights. The MOI may restrict the powers of the board and especially minority shareholders have greater protection than in the previous act.



Shares (cont.)

- Also referred to as securities and form part of the stock of the company
- Represent units of ownership of company
- Apart from ordinary shares, different classes of shares may be created and issued
- Rights attached to different classes of shares must be set out in the MOI
- Share may be issued to two or more persons

Different classes of shares

- Ordinary shares
 - At least one ordinary share to be issued
 - Right to vote
 - Company may have different classes of ordinary shares
 - Dividends and voting rights might differ for different classes of ordinary shares
 - Shareholders will have a pre-emptive right when new shares issued
 - Right to receive dividends

Different classes of shares (Cont)

■ Cumulative Preference Shares

- Fixed percentage rights to dividends
- Unpaid dividends to accrue

■ Non-Cumulative Preference Shares

- Fixed rights to dividends, only when dividends are declared
- No claim in future for unpaid dividends

■ Participating Preference Shares

- Right to specified rate of dividends equal to ordinary shares
- If dividends declared, higher than percentage rate, dividends will equal that of ordinary shares
- Preference right to be paid back purchasing price on liquidation in most cases

Authorised shares

Authorised shares (*Sect 36*)

- Board resolution
 - Increase or decrease number of authorized shares of any class
 - Reclassify classified shares not issued
 - Classify unclassified shares not issued
 - Determine preferences, rights, limitation and terms of shares not issued
- Special resolution
 - Reclassify shares of which shares have been issued
 - Classifying any unclassified shares that affects the voting rights of current shareholders

Authorised shares (cont.)

- Shares issued in excess of the number of authorised shares in accordance with *Sect 36* may be retroactively authorised by special resolution of shareholders within 60 days after the shares were issued.
- If not adopted when put to vote, share issue is nil and void.
- Fair value of consideration must be refunded with interest.
- Directors present at meeting who did not vote against approval, are also liable for any loss.

Issue of shares

Issue of shares (*Sect 39(2)*) (*Alterable*)

- Pre-emptive rights
- Minutes
- Determine if special resolution by shareholders or board resolution
- Confirmation of offer made to all shareholders
- Date of issue
- Name of shareholder and consideration paid for shares
- Issue share certificate (**Sec 51**)
- Complete company register
- Share certificate to be signed by two directors

Transfer of shares

- **Transfer of Shares**
 - Pre-emptive right
 - Fair value to be determined by the board.
 - Offer to be made in writing, giving shareholders a reasonable time to respond.

Solvency & liquidity test

- Solvency & liquidity statement (Sec 4):
 - the assets of the company, as fairly valued, exceed the liabilities of the company, as fairly valued; and
 - the company will be able to pay its debts as they become due in the ordinary course of business for the next 12 months.

Share buy back

Share buy back (Sect 48)

- Solvency and liquidity test
- Minutes
- Determine if special shareholders' resolution or board resolution
- Information of shareholder
- Consideration
- Date of re-acquisition
- Cancel share certificate
- Update company register
- Amend authorised and issued capital
- Amend shareholder register

Lost share certificates

- **Lost share certificates**
 - Sworn affidavit by shareholders confirming loss of certificate
 - Indemnity
 - Share allotment on shareholders register to be cancelled
 - New share certificate to be issued with new certificate number
 - Share certificate to be signed by two directors
 - Complete company register

Conversion of shares to no par value

Conversion of shares to no par value (*Reg31*)

- Pre-existing companies
- Par value shares authorised, but not issued
- Different classes of shares
- Every resolution must state the following:
 - All information that may affect the value of the securities affected by the proposed resolution
 - Identify the class of holders of the securities affected by the proposed conversion
 - Describe the material effects the proposed conversion will have on the rights of the shareholders
 - Any harmful material effects of the proposed arrangement against the compensation that any of the shareholders will receive in terms of the arrangement

CCC

Conversion of shares to no par value

Conversion of shares to no par value

- To be lodged with CIPC:
 - CoR31
 - CoR15.2
 - Notice of meeting
 - Proposed resolution
 - Report by directors
 - Special resolution
 - Power of Attorney where applicable
 - Certified ID of director/s who signs the CoR31 and CoR15.2 and representative
 - Lodged manually to moiamendments@cipc.co.za

7. DIRECTORS

7. DIRECTORS

Teamwork

BOD



7.1 DIRECTOR MEETINGS AND RESOLUTIONS

- Directors have a fiduciary duty towards the company and enhanced personal liability in terms of the 2008 Companies Act.
- This should be motivation to manage and administer their companies efficiently and with total adherence to the relevant laws, or to appoint officers with the necessary skills and knowledge, to do so on their behalf.
- In terms of the Act, any officer of a company has the same liability as a director

Director Meetings and Resolutions (Cont.)

❖ Director Meetings and Resolutions (Cont.)

- **Requirements for minimum directors (Sec 66(2))**

- Private company - minimum 1 director
- Non-profit, Public and State-Owned – 3 directors

- **Composition of a board**

- ***Ex Officio* director**

MOI may provide that a person appointed in consequence of him holding some other office has the same powers as any other director, unless altered in the MOI.

- **Alternate director**

Appointed as substitution for a specific director and may only vote on matters at a board meeting in absence of the director

Composition of the Board (cont.)

- **Executive director**
Fully employed by the company.
- **Non-Executive director**
Not involved in the day to day running of the business.

All directors, notwithstanding their title, carries the same personal liability.

Board Meetings and Resolutions

The Board may determine the form and time for giving notice.

More than 50% of directors must be present before a vote may be called at a meeting.

More than 50% of directors present must approve.

Director Meetings and Resolutions (Cont.)

- The Act does not stipulate how many board meetings should be held annually.
- Board meetings may be conducted by electronic communication, or by way of a round robin resolution.
- A resolution adopted by the board must be noted, dated and sequentially numbered; and is effective on the date of the resolution, unless stated otherwise.
- If a director has a personal financial interest in respect of a matter to be considered at the meeting, he must disclose his interest and the nature thereof, before the matter is considered. **(Sec 75(5))**

Director Meetings and Resolutions (Cont.)

- After the disclosure, he must leave the meeting and may not take part in the consideration of the matter.
- A director attending a meeting, who abstained from voting on a certain matter, will be equally liable with the other directors who voted in favour of that matter.
- A resolution adopted when a director failed to disclose interest, is invalid except as prescribed by Sec 75(7).

Director Meetings and Resolutions (Cont.)

Appointment of directors

- Board may elect a director to fill any vacancy.*
- Shareholders must elect at least 50% of the Board.*
- An elected director must confirm his acceptance to serve as a director in writing.
- He must provide the company with a list of all other companies on which he serves as a director.
- Section 69(8) gives a clear indication of persons disqualified to become directors.
- In addition, a company may set minimum qualifications to be met by directors.



Note: If a company only has one director, both directors (new and resigning) should to sign the CoR39.

- Mandate to person lodging CoR39 to be signed by all directors.
- Documents for lodgement

Director Meetings and Resolutions (Cont.)

■ Resignation of directors

- A director must inform a company of his resignation in writing, stating the effective resignation date.
- An alternate director automatically ceases to be a director if the director he acts for, resigns from office.

■ Removal of directors

- The board may remove a director if he has become disqualified, incapacitated and unlikely to regain his capacity and has neglected his duties as a director.
- The director in question must be given a reasonable time to make a presentation to the board.
- Director may not be removed by way of a round robin resolution

8.

PUBLIC OFFICER

Public officer

■ A company is required to appoint a Public Officer within one month after the company begins to carry on business. The Public Officer will be the face of the company. - “Tax Administration Act, South African Revenue Service (“SARS”)”

■ Appointed by directors

- The Public Officer must be a natural person and a resident in the RSA.
- Approved by SARS
- Must have a tax number
- Senior official
- A company must notify SARS within 14 days if a new Public Officer is appointed.
- The appointment of a Public Officer is not registered with CIPC.

Public officer (cont.)

- A Public Officer will be held liable in his personal capacity, if any information provided to SARS and signed by him, proves to be false.
- **Duties may include:**
 - ❑ Attend to the various tax registrations such as VAT, Payroll, Customs
 - ❑ Pay taxes due to SARS: VAT, PAYE, Employee reconciliations, Income tax, Dividends tax , Provisional taxes etc.

Public officer (cont.)

- Notify SARS of any change of the registered particulars of the company
- Deregistration of Tax types when company is no longer required to pay taxes.
- When vacancy occurs, new appointment must be lodged to SARS within 21 days

9. REGISTERED ADDRESS

9. Registered address

Sec 23(3)

- The Companies Act requires companies to ensure that the registered office address is up to date.
- Companies must submit CoR21.1 forms when their address changes.
- This address must be the address where the company conducts its business from. (CIPC Practice note 2 of 2012)
- Any legal documents will be served at the registered address
- Records of the minutes, resolutions, financial statements and share register must be kept at the registered address declared to CIPC.
- Where records are not kept at the registered address, companies must submit a CoR22 to advise CIPC of the address where records are kept.

10.

Location of company records

10. Location of company records

Location of company records *(Section 25, Regulation 22)*

- Only to be done if location of company records are not at the registered address of the company
- Must be accessible within RSA
- Notice to be filed with CIPC if company records are located at any other location than the registered address of the company
- Notice to be filed with CIPC if company records are moved to another location

11. Record keeping

11. Record keeping

Statutory documents to keep on record *(Section 24, Regulation 23)*

- **Indefinitely**
 - MOI (Memorandum of Incorporation), or for 7 years if the MOI has been replaced by a new MOI
 - Any amendments made to the MOI (Special resolutions), or for 7 years after a special resolution is no longer valid
 - Company or data register containing the history of the company

Record keeping (cont.)

- **For a period of 7 years**
 - Record of directors, after resignation
 - All reports presented at Shareholders meeting
 - Annual financial statements
 - Accounting records
 - Notices and minutes of all board and shareholders meetings
 - Copies of all written communication sent generally to all shareholders
 - Share certificates and share transfer forms, after the shares have been transferred

12.

Access to company records

12. Access to company records

Access to company records *(Section 26, Regulation 6)* *(Part 3: Promotion of Access to Information Act, 2000)*

- A person who holds a beneficial interest in any securities of a profit company or, is a member of a NPC company, may free of charge inspect the statutory records of a company
- Any other person, not mentioned above, has the right to inspect the records of company upon payment of an amount not exceeding the prescribed maximum fee
- Employees may only request to inspect the records of a company through the union which they belong to
- No person has the right to inspect directors' minutes and accounting records, unless board agrees thereto or by a court order
- Company records must be accessible within the RSA

13. AUDITORS

13. Auditors

Appointment of auditor (Sec 90)

- It is not compulsory for a private or non-profit company to appoint an auditor.
- It is compulsory to audit a company's financial statements, if:
 - the public interest score exceeds 350 points; or
 - the public interest score exceeds 100 points, if the financial statements were, for a specific year, compiled internally.
- The auditor must be independent and not be a director, employee or regularly performed the duties of accountant for the five financial years immediately preceding the date of appointment.
- The same auditor may not serve as the auditor of a company for more than five consecutive financial years

Auditors (cont.)

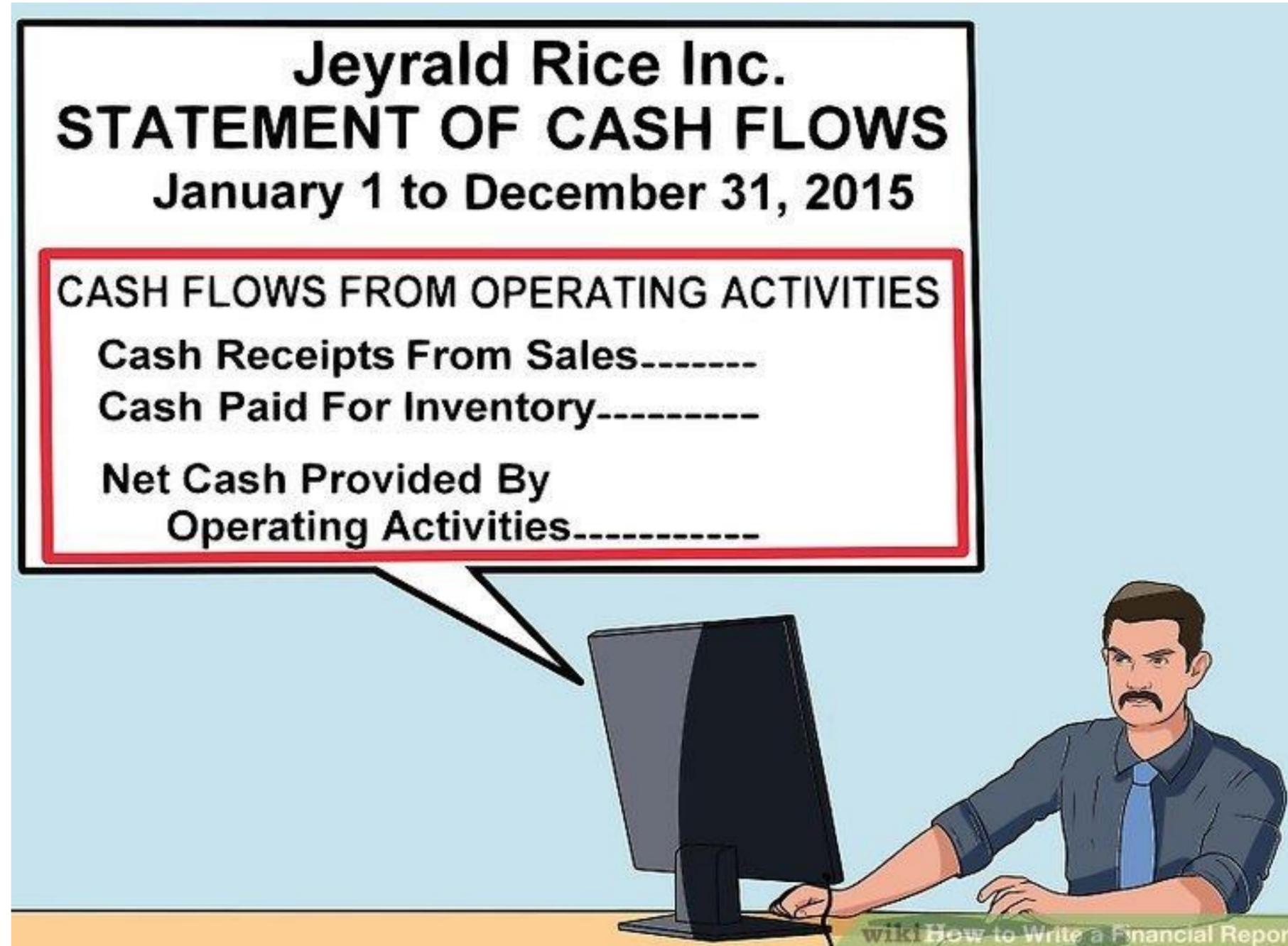
Accounting Records

- Accounting records must be kept at, or be accessible from, the registered office of the company.
- A person who holds beneficial interest in any securities, is entitled to receive a copy of the financial statements free of charge.
- The following accounting records must be kept for a period of at least seven years:
 - Reports presented at AGM meetings, in written- or electronic form
 - Annual Financial Statements, after the statements were issued
 - Accounting records, after completion

10. FINANCIAL YEAR END

14. Financial year end

F/Y



Jeyrald Rice Inc.
STATEMENT OF CASH FLOWS
January 1 to December 31, 2015

CASH FLOWS FROM OPERATING ACTIVITIES

Cash Receipts From Sales-----
Cash Paid For Inventory-----
Net Cash Provided By
Operating Activities-----

wikiHow to Write a Financial Report

Financial year end

Sec 27 of the Act

- The financial year end of a company may not be longer than 15 months.
- The financial year may be shortened and there is no minimum period for a financial year
- A company may only change its financial year end once during a particular financial year.
- The current – and new year end must be dates later than the date on which the notice is filed.
- COR25

15.

ANNUAL FINANCIAL STATEMENTS AND ANNUAL RETURNS

15. Annual financial statements and annual returns

Sec 28,29

- All companies required to be audited in terms of the Act, must lodge financial statements in iXBRL when annual duties are paid
- Only the company or its authorised representative may pay annual duties and lodge the AFS
- CIPC deployed the “AR Hard-stop” functionality where AR cannot be paid without Annual duty payment
- A company that is not required to be audited must lodge an Accountability Supplement, but may voluntarily lodge its’ converted financial statements
- AFS lodgement must be done retrospectively from 1 April 2013

AFS & AR (cont.)

- Accountability supplement must be lodged retrospectively from 1 January 2016
- Annual financial statements are uploaded to the system, where CoR30.1 was previously used.
- CoR30.2 - Accountability Supplement
- Annual returns for CC's are payable within 60 days
- Companies returns are payable within 30 days
- If AFS is not approved within 6 months after the Year end, we may use the AFS of the previous financial year when paying annual duties

AFS & AR (cont.)

- **Information required:**
 - Main business; Turnover on last financial statements; Name and Number of entity; Tel and e-mail address of company/CC.
 - Confirmation of directors; members; Registered office; Auditors; Company Secretary; Location of records; Tel and e-mail address of company/CC.
 - If data of above differs from CIPC, documents should be lodged with CIPC to register the corrections.
 - Payment of annual duties will not be accepted the following year, unless the data has been corrected with CIPC.

AFS & AR (continued)

- **Sec 187(3)** of the Act requires CIPC to monitor compliance with and contraventions of financial reporting standards
- Directors' responsibility
- Failure to pay annual duties will result in penalties and deregistration
- Failure to lodge the Financial statements or Accountability supplement will result in the issue of compliance notices and/or fines
- Media release 2 of 2018 – High Court granted order to CIPC to impose fines (**sec 175**)
 - CIPC V CITICONNECT 9503/18 – ORDER GRANTED
 - CIPC V BLUE SKY AIR 9502/18 – ORDER GRANTED

AFS & AR (continued)

Fee and penalty table:

CLOSE CORPORATIONS	
ANNUAL TURNOVER	
• Less than R50 million	100.00
• Equal or more than R50 million	4,000.00
COMPANIES	
ANNUAL TURNOVER	
• Less than R1m if filed within 30 business days	100.00
• Less than R1m if filed after 30 business days	150.00
• R1m but less than R10m filed within 30 business days	450.00
• R1m but less than R10m filed after 30 business days	600.00
• R10m but less than R25m filed within 30 business days	2,000.00
• R10m but less than R25m filed after 30 business days	2,500.00
• R25m or more filed within 30 business days	3,000.00
• R25m or more filed after 30 business days	4,000.00

12. NCOMPLIANCE CHECKLIST

12. Compliance checklist

- **CIPC Notice no 52 of 2019**
 - Effective date and understanding the notice
- **The Compliance Checklist**
 - what is the Compliance Checklist?
 - b) Why the Compliance Checklist?
 - c) Which companies must comply?
 - d) What happens if false information is provided?
 - e) Applicable Sections of the Act
 - f) Know how to use in practice
 - g) How to rectify incorrect information provided
 - h) Queries – email address

Compliance checklist (continued.)

- Mandatory as from 1 January 2020
- For ALL companies
- CIPC to monitor and regulate compliance with Companies Act
- Directors responsibility to comply with the Act at **ALL** times

NO ESCAPE FROM MANDATORY COMPLIANCE OF THE ACT

Compliance checklist (continued.)

What is the Compliance Checklist?

A Declaration on the compliance status of a company to specific sections of the Companies Act No. 71 of 2008 (as amended)

Why the Companies Checklist?

CIPC enforced this Compliance Checklist to monitor compliance, and:

- To ensure compliance with the Companies Act
- To educate directors, officers and company secretaries
- Monitor and regulate proper compliance

Compliance checklist (continued.)

What happens if you provide false information?

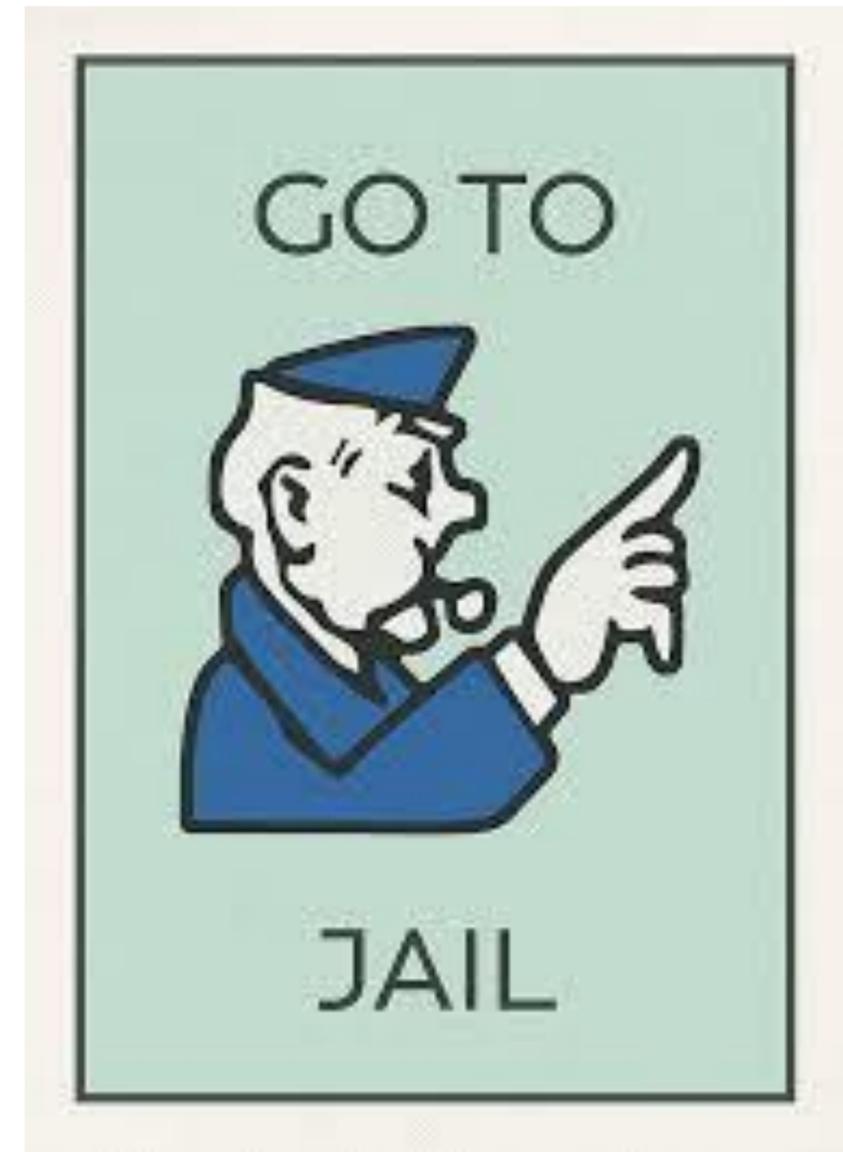
- As per Section 215 (2)(e) a person who knowingly provides false information to the CIPC commits an offence.
- Section 216 (b) holds such a person liable to pay a fine or be imprisoned for a period not ***exceeding 12 months, or to both a fine and imprisonment.***

CIPC recently won the following High Court Cases:

CIPC vs CITICONNECT 9503/18

CIPC vs BLUE SKY AIR 9502/18

CIPC vs SISAO PROJECT 9504/18



Compliance checklist (continued.)

If, for any reason, incorrect information was submitted, send an email to:

COR135.1complaints@cipc.co.za

and explain why incorrect information was provided and why it should be rectified. CIPC will decide if your reason is acceptable.

For any questions or specific points of clarification on the Compliance Checklist **use the same email address.**



17. TRIBUNAL

17. Tribunal

Companies Tribunal

- Dispute resolutions may be referred to the Tribunal as an alternative to applying to a court for relief
- Contribute to the promotion of fair and ethical business practices
- Provide alternative dispute resolution through conciliation, mediation and arbitration
- Companies Tribunal independent from CIPC

Tribunal (cont.)

- Consist of a chairperson, and not less than 10 members appointed by Minister
- Comprise of persons adequately qualified and experience in law, commerce, industry and public affairs
- Chairman and sufficient members must have legal training and experience
- Has jurisdiction throughout RSA
- Independent, subject only to Constitution and Law

Tribunal (cont.)

- Has jurisdiction to consider matters relating to
 - Name disputes
 - Company disputes relating from Act
 - Exemption to appoint Social and Ethics Committee
 - Extension to hold AGM (Public and SOC)
 - Directors disputes
 - CIPC disputes
 - Removal of directors in some instances

18. DEREGISTRATION AND RESTORATION

18.1 Deregistration

- **Deregistration (Sec 82(3) and Reg 40)**
- Any person may apply to CIPC to deregister a Company or Close Corporation by submitting a statement to CIPC to declare that the entity is no longer trading, has no assets or liabilities and there is no chance of a liquidation application.
- To CIPC “any person” does not mean what we think it does, because they specifically require a letter signed by all directors/members
- CIPC will also deregister if annual returns are outstanding for 2 consecutive years, or if they believe that the company/close corporation ceased trading for 7 years

Deregistration (cont.)

- CIPC will inform the entity of the intention to deregister by registered mail to the last registered address and to the addresses of directors, or by means of electronic communication to e-mail addresses on record
- If the information is not updated with CIPC whenever a change occurs and the entity is deregistered, CIPC cannot accept responsibility.
- With the statement/resolution, the following must be submitted:
 - Tax clearance certificate
 - Certified copies of ID's of all directors
- The process takes about 4 – 6 months to finalise

Deregistration (cont.)

- If an entity is deregistered by CIPC the legal persona of the company ceases to exist
- directors / shareholders / members / any other person can still be held liable for any act before deregistration – common law
- Directors, officers and member may be held liable as if the entity was never deregistered and may be prosecuted (**Sec 83**)
- Any immovable property of a deregistered entity becomes *bona vacantia* (ownerless property) and will belong to the State

18.2 Restoration

- CIPC will restore a company or CC to business if
 - the company or close corporation was in business at- and the time of deregistration
 - Fixed property is owned in the name of the entity
 - By Court order
- Sec 82(4) of the Act stipulates that any interested person may apply for an entity to be re-instated
- Re-instatement finalised only when annual duties are paid Reg 40(6)

Restoration (cont.)

- An affidavit must be submitted to CIPC stating the reasons for restoration and undertaking to pay annual duties
- Only company or registered representative are authorised to pay annual duties once restored
- If application is brought by a creditor or any other person, it will be advisable to apply for a Court order

Q&A

Please use the chat sidebar to the right of the video / presentation on the screen to ask your questions.

If you would like to e-mail a question please use:

technicalquestions@accountingacademy.co.za



**Thank you for your
participation**



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